

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No.203-SB of 1996

Date of Decision: July 18, 2007

Prem Singh

...Appellant

VERSUS

The State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Gopal Sharma, Advocate,
for the appellant.

Mr.S.K.Hooda, Sr.DAG, Haryana,
for the State.

RANJIT SINGH, J.

Appellant, who is accused of an offence under Section 376 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called "SC & ST Act") and charged accordingly, was convicted for offence under Section 354 IPC for outraging modesty and sentenced to suffer

rigorous imprisonment for six months with fine of Rs.1000/-. He was further to undergo rigorous imprisonment for 45 days in default of payment of fine. The appellant also stands convicted for an offence under Section 3 of the SC & ST Act and awarded identical sentence upon his conviction for the said offence. Both the sentences were to run concurrently. He has filed the present appeal impugning his conviction and the award of sentences, as above-mentioned.

On 11.4.1995, Munni, aged about 13 years, daughter of Dhanpat, resident of village Lohani, lodged a complaint against the appellant before ASI Chhotu Ram of Police Station, Jui alleging that she had been subjected to a forcible intercourse by the appellant. The father of the complainant had taken 12 acres of land belonging to Sant Lal for cultivation. The complainant-prosecutrix accompanied by Reena resident of village Malikpur and Prem daughter of Mha Singh had gone to collect grass for cattle in the fields of Sant Lal. Reena and Prem left at about 11.00 A.M. after collecting grass. The complainant had stayed back in the fields to collect some more grass and while doing so, she strayed in the fields of Prem son of Nihal Singh. The appellant caught hold of the complainant-prosecutrix by her hands and forcibly took her to a nearby water-course. There the appellant broke the string of her salwar and laid her on the ground in the water-course. After removing his own trousers, the appellant lied over the complainant. Complainant has also alleged that the appellant started doing bad act with her. She cried for help, but appellant gagged her mouth with her 'chunni'. The complainant succeeded in removing chunni from her mouth and again cried for help. Hearing this, her Chachi (Aunt) Reshma wife of Ram Sarup,

who happened to be present in nearby fields, came there. The appellant ran away, leaving the complainant. She came back to her house and narrated the occurrence to her mother, who in turn, informed her father about the same. Panchayat was collected, but they could not succeed in resolving the complaint. Matter was accordingly reported to police at Police Post, Jui where the complaint was recorded and case registered by ASI Chhotu Ram. The complainant was subjected to medical examination. Arrest of the appellant followed on 13.4.1995. On completion of investigation, the challan was presented under Section 376 IPC and Section 3 of the SC & ST Act.

The case of the prosecution is supported by twelve witnesses, including the complainant-prosecutrix, her aunt and the doctor, who had conducted the medical examination. The appellant, when confronted with the incriminating circumstances and the evidence appearing against him, denied the allegations made by the prosecutrix and pleaded that he is falsely implicated. As per the appellant, the father of the prosecutrix was cultivating the land of one Balwan, who was a drunkard. Balwan had slapped the father of the appellant earlier, who in return, had slapped him back. As per appellant, it is because of this enmity that he has been falsely implicated in this case by the prosecutrix.

While appreciating evidence, the trial court, after referring to the evidence of age on the basis of the birth entry, came to conclude that the prosecutrix was aged about 13 years on the date of the incident. As per the birth entry, the date of birth of the prosecutrix is 4.2.1982 and thus the conclusion about the age of the prosecutrix

on the date of incident. There is not much dispute that the prosecutrix belongs to a scheduled caste, which is also proved with sufficient assurance by the prosecution by producing on record certificate, Exh.PJ, issued by S.D.M.Bhiwani. Prosecutrix is a Chamar by caste. The appellant concededly is Rajput and hence offence against him is under Section 3 of the SC & ST Act also. The allegation of forcible sexual intercourse is supported by clear and cogent account given by the prosecutrix. While appearing as PW-10, she categorically deposed before the court that the appellant broke the string of her salwar, took off his own trousers and lied over her and did 'Bura Kaam'. (Bad Act). She also deposed about having been gagged by the appellant with chunni and her crying for help, which had attracted Reshma, her aunt to the scene. Her version is supported by Reshma (PW-11), who states that having heard the noise, she came to the place where she saw appellant running from the place. Prosecutrix-complainant, at that time, was seen lying naked in the water-course. The evidence of the prosecutrix, as such, had received sufficient corroboration from the account given by Reshma (PW-11). The trial court, however, by referring to the medical evidence has held that there was no sexual intercourse in this case, as alleged by the prosecutrix. No doubt, Dr.Sadhna Anand (PW-8) gave evidence that there is no possibility of woman having undergone sexual intercourse immediately prior to her medico-legal examination on 11.4.1995, but this evidence is required to be appreciated in the background that incident happened in the morning of 11.4.1995, whereas medico-legal examination was conducted late in the evening. Hymen of the prosecutrix was found ruptured having

two radial tears. Nothing much can be read from the evidence of chemical examination. Report, Exh.PF showed that semen was not detected on the salwar, lady shirt, chunni, public hair, swabs and even on the underwear. As per the evidence of prosecutrix, the appellant had removed the salwar and shirt worn by the prosecutrix and absence of semen thereon in this background can easily be explained. It is strange to notice that the trial court, without much justification and basis, appears to have invented its own story to say that the appellant had assaulted to outrage the modesty of the prosecutrix finding her alone in the field. The court can not be permitted to introduce a theory, which is not even projected by a party. Without any basis, the trial court found the story as narrated to be a fertile imagination of the prosecutrix. The prosecutrix did not set up a case of she being assaulted alone. She gave a positive version that she was forcibly pulled to the water-course where her salwar and shirt were removed by the appellant and he then lied over her after removing his trousers. Her version would find corroboration from the fact that she was found naked by PW-11. Even PW-8 (doctor) gave evidence that salwar and shirt of prosecutrix produced before her were found torn at some places. Even if one was to say that the prosecutrix was not subjected to sexual intercourse, this certainly is a case of at least an attempt to rape and not of a simple assault as held by the trial court. Reference may be made to the case of **State of Punjab Vs. Gurmit Singh & others, 1996 Crl.L.J.1728** where it is viewed that in lust loaded offences, like rape etc., prosecutrix's evidence alone is sufficient without corroboration to base a conviction where it inspires confidence and is found reliable. There is nothing to

view her testimony with doubt, disbelief or suspicion. The attempt of the defence to project false implication of the appellant because of enmity as alleged certainly is too far fetched and could not be established before the court. I am constrained to notice that the State has not preferred any appeal against the findings returned by the trial court and, as such, it is not possible to interfere in the said finding while dealing with the appeal filed by the appellant. There is more than enough evidence to up-hold the conviction of the appellant recorded under Section 354 IPC and under Section 3 of the SC & ST Act. There is no merits in the appeal and the same is accordingly dismissed.

I am not inclined to accept the plea of leniency in sentence as made by the counsel of appellant. It is pleaded before me that the case is of old vintage and the appellant has, by now, suffered enough. In my considered view, the appellant is fortunate enough to escape from the serious consequences of his action upon being excused of his serious misadventure and as such would not deserve any sympathy or leniency, which is un-called for. Accordingly, plea for reduction in the sentence, as made, is rejected. The appellant would submit himself before CJM, Bhiwani to undergo the remaining part of the sentence.

July 18, 2007
ramesh

(RANJIT SINGH)
JUDGE